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SUPREME COURT OF THE UNITED STATES

Ray Cash and Louis Jones, Petitioners

v. No. 62

State of Arkansas, Respondent

RESPONSE AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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SUPREME COURT OF THE UNITED STATES

RAY COLE AND LOUIS JONES ..... *Petitioners*

v. No. 762

STATE OF ARKANSAS ..... *Respondent*

RESPONSE AND BRIEF THEREON TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

STATUTE INVOLVED

"Sec. 2. It shall be unlawful for any person acting in concert with one or more other persons to assemble at or near any place where a 'labor dispute' exists and by *force or violence* prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person acting either by himself or as a member of any group or organization, or acting in concert with one or more other persons to promote, encourage or aid *any such* unlawful assemblage." **

** Italics ours.

STATEMENT

The petitioners, Cole and Jones, together with Jesse Bean, were informed against by information (R.1). The information followed the language of Section 2 of Act 193 of the General Assembly of the State of Arkansas for 1943 charging the petitioners with a violation of the *second part* of Section 2 in that "Walter Ted Campbell, acting in concert with other persons assembled at the Southern Cotton Oil Plant where a "labor dispute" existed, by force and violence prevented Otha Williams from engaging in a lawful occupation *and* that Ray Cole, Louis Jones and Jesse Bean did unlawfully and feloniously, acting in concert with each other, promote, encourage and aid the unlawful assemblage *engaged in by Walter Ted Campbell and others.*

The information thus first alleged (as is necessary under the statute) an unlawful assemblage and, second, that the petitioners violated the second part of Section 2, Act 193, *supra,* by unlawfully aiding, promoting and encouraging such *unlawful* assemblage.

The petitioners were put to trial and the court correctly instructed the jury as to the law governing the offense for which the defendants were being tried (R.94-95). These instructions were pointed out and discussed by the Supreme Court of the United States in *Cole v. Ark.*, 333 U. S. 200-201. The Supreme Court of Arkansas affirmed the convictions in opinion of the Arkansas Supreme Court dated January 10, 1949, Law Reporter, Vol. 89, No. 8, p. 357. This petition for certiorari is from that opinion (R.115-124).

The Arkansas Supreme Court correctly holds that the essence of the offense is the *un*lawful aiding, promoting and encouraging of an unlawful assemblage, an assemblage being *un*lawful only under this Act when it prevents, by force and violence, a worker from engaging in a lawful vocation or occupation. The petitioners were convicted for this offense; i.e., promoting, aiding and encouraging the unlawful assemblage engaged in by Walter Ted Campbell and others, such assemblage being *un*lawful by reason of force and violence being used to prevent Otha Williams from engaging in his legal and lawful occupation.

REASONS FOR REFUSING THE WRIT

I

The opinion of the Supreme Court of Arkansas, delivered January 10, 1949, from which this petition stems, interprets Section 2 of Act 193, *supra*, as interpreted by this Court in the mandate and opinion in *Cole* v. *Arkansas*, 333 U. S. 196. Petitioners were tried and convicted under Section 2 of 193, *supra*, for violation of the second part of Section 2, *supra*. *Cole* v. *Arkansas*, 333 U. S. 196; *Cole and Jones* v. *State*, Law Reporter, Vol. 89, No. 8, p. 357, also delivered January 10, 1949 (R.115-124).

The Circuit Court instructed the jury under Section 2 and the second part thereof. The Supreme Court of Arkansas considered the case and interpreted the law under Section 2 and the second part thereof. The Act under which petitioners were charged, the information based thereon, and the trial court's instruction to the jury, clearly require and required that the assemblage

be *un*lawful. The assemblage becomes unlawful when it adopts force and violence as a means of preventing a workman from pursuing his lawful vocation or occupation. When these methods are employed, the prior lawful and peaceable assemblage becomes an *unlawful one.* Thus, any person who encourages or aids or promotes the *creation* of an *unlawful assemblage* violates the law.

The interpretation of a state statute is a matter for the state's courts and no Federal question is here involved. *Hotel & Restaurant Employees International Alliance Local No. 22* v. *Wisconsin Employment Relations Board,* 315 U. S. 437. The statute is definite in that before a violation of law can occur, the assemblage must adopt force and violence as a means of preventing lawful work. Section 2 of Act 193, *supra,* makes it unlawful for any person to act in concert with *one or more* other persons and with such "one or more other persons" to assemble and by force or violence prevent, or attempt to prevent, any person from engaging in a lawful occupation. Thus, there must be an assemblage of one or more persons. There is no prohibition in Act 193, *supra,* denying the constitutional right to assemble peaceably and to express views on the matter in controversy. *Thornhill* v. *Alabama,* 310 U. S. 88; *Carlson* v. *California,* 310 U. S. 106, and *A. F. L.* v. *Swing,* 312 U. S. 321, being clearly distinguishable in that there is no dispute in the instant case concerning the constitutional right to assemble *peaceably.* It is not disputed that a person may become an accessory to a criminal act by giving aid, encouragement and advice to the criminal who commits the crime. No constitutional question is involved. The Supreme Court of the United

States in the case of *Milk Wagon Drivers Union* v. *Meadow-Moore Dairies*, 312 U. S. 287, 86 Law Edition, 836, said:

> "Freedom of speech and freedom of the press cannot be too often invoked as basic to our scheme of society, but these liberties will not be advanced or even maintained by denying to the states with all their resources, including the instrumentality of their courts, the power to deal with coercion due to etxensive violence."

Act 193 is an exact copy of the Texas statute, Art. 1621(b) of the Texas Penal Code, as amended by Chapter 100, Acts 47th Legislature, Regular Session, Vernon's Anno. P. C. Art. 1621(b), except the Texas statute carries an emergency clause whereas Act 193 does not. The Texas Court of Criminal Appeals has sustained the constitutionality of the Texas statute in *ex parte Sanford*, 144 Criminal Reports, 430, 157 S. W. 2d 899, on the authority of *ex parte Frye*, 143 Texas Criminal Reports 9, 156 S. W. 2d 531. The *Sanford* case, *supra*, was appealed to the United States Supreme Court where it was dismissed on the ground that it did not involve a Federal question. *Sanford* v. *Hill*, 316 U. S. 647, 86 Law Edition 1731.

The official opinion of the Supreme Court of Arkansas (R.115-124) on page 122 of the Record, uses these words:

> "Appellants say that the statute prevents free assembly. We disagree with that statement. The Act prevents unlawful assemblages which cause violence and interferes with the rights of others."

The Supreme Court of the United States in the case of *Hotel and Restaurant Employees International Alliance*

Local No. 22, et al., v. Wisconsin Employment Relations Board, et al., 315 U. S. 437, holds:

> "By precisely what restraints Wisconsin has imposed upon the petitioners is for the Wisconsin Supreme Court to determine. • • • That Court has, of course, the final say concerning the meaning of a Wisconsin law and the scope of administrative orders made under it. • • • The Act does not limit the right of an employee to speak freely • • • • it clearly refers to the kind of picketing which the *Thornhill* case says the state has power to deal with as part of its power to preserve the peace and protect the privacy, the lives and the property of his residence • • • as the order and the appropriate provision of the statute upon which it is based, leave the petitioners freedom of speech unimpaired, the judgment below must be affirmed."

Aiken v. *Wise*, 195 U. S. 194; *Lincoln Federal Labor Union, et al* v. *Northwestern Iron and Metal Company, et al*, 335 U. S. 525. It also held in *American Federation of Labor* v. *American Sash and Door Company*, 335 U. S. 538:

> "Legislative authority, exerted within its proper field, need not embrace all the evils within its reach. And concerning state laws, we have said that the existence of evils against which the law should afford protection and the relative need of different groups for that protection is a matter for the legislative judgment."

West Coast Hotel Company v. *Parish*, 300 U. S. 379; *Labor Board* v. *Jones and McLaughlin Corporation*, 301 U. S. 1.

Therefore, the opinion of the Supreme Court of Arkansas, interpreting Act 193, *supra*, adequately guarantees and protects petitioners freedom of speech and peaceable assembly and picketing. The petitioners were afforded every opportunity to be heard and to have such proceedings as were adequate to their rights, "due process" was not, therefore, denied the petitioners. *Anderson National Bank* v. *Luckett*, Ky. 1944, 64 S. Ct. 599, 88 Law Edition

SUMMARY

I

The Supreme Court of Arkansas considered and affirmed petitioners' case under Section 2 of Act 193 and upon the identical questions upon which the petitioners were tried and convicted in the trial court.

II

Act 193 is a definite, valid Act aimed at a use of force and violence.

III

The Supreme Court of Arkansas construed the Act to mean only an unlawful assemblage which, by force and violence, prevents or attempts to prevent any person from engaging in a lawful vocation and that peaceable assemblages and picketing are not prohibited by the Act.

There is no federal question involved and it is respectfully urged that the petition of the petitioners for Writ of Certiorari herein should be denied.

Respectfully submitted

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